

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patentees: Doty et al.
Patent No.: 7,067,143
Issued: June 27, 2006
Title: PREMIXED AMIODARONE PARENTERAL SOLUTION AND METHOD
FOR MAKING THE SAME
Docket No.: CPCRD-5751A US CIP (112713-1188)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(d)

Sir:

Applicants hereby Request Reconsideration of the Patent Term Adjustment ("PTA") for U.S. Patent No. 7,067,143. This Request is being filed in response to the PTA which was listed on the face of the above-identified U.S. patent. Applicants have reviewed the PTA set forth (0 days) by the Patent Office and hereby request that this determination be adjusted to 319 days.

The Determination of Patent Term Adjustment included with the Notice of Allowance set forth a PTA of 175 days. Applicants agreed with that determination. However, due to the events after the mailing of the Notice of Allowance, the patent term had to be adjusted. The face of the above-identified patent reflects a PTA of 0 days. Applicants respectfully submit that this determination is not correct for the reasons set forth below.

After issuance of the Notice of Allowance, four adjustments were made to the PTA for the above-identified patent. The Patent Office determined that a 323 day adjustment should be made based on the USPTO delay in issuing the patent within four months of payment of the issue fee. The issue fee was paid, along with a Petition to Revive, on April 8, 2005 and the patent issued on June 27, 2006 which is 323 days past the 4 month date (August 8, 2005). Therefore, 323 days were added to the patent term. Applicants agree with this determination.

Second, the Patent Office determined that 301 days should be subtracted from the above adjustment due to delay by the applicant in payment of the issue fee. The Notice of Allowance was mailed on March 11, 2004. The issue fee was paid, along with a petition to revive, on April

8, 2005 which is 301 days past the 3 month date (June 11, 2004). Therefore, 301 days were subtracted from the patent term. Applicants agree with this determination.

According to PTO records on the PAIR system, an additional 315 days was subtracted from the PTA in association with the filing of the issue fee. However, it is not clear how this 315 was calculated. Since 301 days were already subtracted, however, Applicants do not agree with this determination. Therefore, 315 days should be added to the PTA.

Finally, time was added to the PTA due to the fact that it took longer than 3 years from the date of filing for the patent to issue. According to 37 C.F.R. 1.702(b), time is added to the patent term for "failure to issue a patent within three years of the actual filing date of the application." The period of adjustment is equal to the number of days beginning on the day after the date that is three years after the date on which the application was filed and ending on the date of issuance. For the above-identified patent, this period (September 1, 2004 to June 27, 2006) is equal to 665 days.

However, this entire period should not be added to the PTA. First, the period from September 1, 2004 to April 8, 2005 is already being subtracted from the PTA due to Applicant delay. Therefore, these days should not be added to the total PTA.

Secondly, the same day cannot be counted toward PTA twice. The period from August 9, 2005 to June 27, 2006 (323 days) has already been counted due to being more than 4 months past the payment of the issue fee. Therefore, only the period from April 8, 2005 to August 8, 2005 can be counted toward the three year pendency provision of 37 C.F.R. 1.702(b). This period is equal to 122 days. Accordingly, Applicants believe that 122 days, and not the 118 as calculated by the PTO, should be added to the PTA.

In summary, at the time of the mailing of the Notice of Allowance, there was a PTA of 175 days. Due to Applicants delay in payment of the issue fee, 301 days were subtracted from that number. Due to the PTO's failure to issue the patent within four months of payment of the issue fee, 323 days were added to the total PTA. Finally, due to the three year pendency provision, 122 days should be added to the PTA. This equals a total PTO delay of 669 days and a total Applicant delay of 350 days, for a total PTA of 319 days.

Applicants note that 37 CFR § 1.705(d) sets forth a due date of 60 days to file a Request for Reconsideration of the Patent Term Adjustment indicated on a patent. Therefore, Applicants respectfully request reconsideration of the PTA calculations for U.S. Patent No. 7,067,143.

Applicants also note that this patent is not subject to a terminal disclaimer.

Pursuant to 37 CFR § 1.705(b)(1), a check in the amount of \$200 in enclosed. To the extent that any additional fees are due and owing for this Application, the Commissioner is hereby authorized to charge them to Applicants' undersigned attorney's Deposit Account, 02-1818.

Respectfully submitted,

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BY 

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Dated: July 26, 2006